Appeal from Appellate Decree No. 53 of 1990

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Against the judgment and decree dt. 27.11.1989 passed by Sri Ram Bilas Singh, Sub-Ordinate Judge IInd, Jamui, in Title Appeal No.13 of 1983 reversing the judgment and decree dated 27.10.1983 passed by Sri Kamla Prasad, Munsif, Jamui, in Title Suit No. 9 of 1981.

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Bisheshwar Yadav ….. Appellant

Versus

Ganesh Pandit & Ors. …..Respondents

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For the appellant : Mr. Basant Kumar Singh, Sr.Advocate
With M/s Jyotindra Pratap Singh, Sunil Kumar No.3 & Sumant Kumar Singh, Advocates.

For the respondent nos. 2 & 3 : Md. Faiz Ahmad, Advocate.

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P R E S E N T

HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM

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S.M.M.Alam,J. This Second Appeal has been preferred against the judgment of reversal passed by Shri Ram Bilas Singh, Sub-Ordinate Judge IInd, Jamui, in Title Appeal No. 13 of 1983 whereby he has been pleased to set aside the judgment and decree dated 27.10.1983 passed by Sri Kamla Prasad, Munsif, in Title Suit No.9 of 1981,whereby the trial court had dismissed the suit of the plaintiffs-respondents for specific performance of contract in respect to the suit property.

2. The case of the plaintiffs-respondents is that the defendant no.1 Dhobi Yadav was the owner of Plot No.1516 under Khata no.34

Area 4.35 acres of village Barajore, P.S. Jhajha, District Munger. He fell in urgent need of money and expressed desire to sell 7.5 decimals of land out of 4.35 Acres land appertaining to the aforementioned plot. The price was fixed at rupees two thousand and the plaintiff paid rupees four hundred as earnest money and on 15.12.79 a Sada Beyanama (agreement for sale) was executed over which the defendant no.1 Dhobi Yadav put his LTI in presence of the witnesses and promised to execute the registered sale deed soon thereafter. The plaintiffs tried to pay the balance amount i.e. rupees sixteen hundred to the defendant no.1 and pursuaded him to execute the sale deed but the defendant no.1 intentionally evaded and kept the matter in abeyance on one pretext or other. At last, the plaintiffs sent a registered notice through his lawyer on 21.1.81 which was duly received by the defendant no.1 on 23.1.1981 but even then he did not execute the sale deed. Later on, the plaintiffs came to know that defendant no.1 had executed a registered sale deed to defendant IInd set Bisheshwar Yadav and Ramroop Yadav. According to the plaintiffs, the said sale deed was without consideration. Further case is that the plaintiffs have been coming in possession of the suit land since the date of execution of Beyanama and the defendant IInd set is not in possession of the same. It has been stated that the plaintiffs are still ready and willing to pay the balance consideration amount.

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3. The defendant IInd set appeared in the suit but the defendant Ist set Dhobi Yadav did not appear. On behalf of the

defendant IInd set, written statement was filed and the suit was contested. As per the written statement of defendant IInd set now the appellant before this court, defendant no.1 Dhobi Yadav was never in need of money and he had no talk with the plaintiffs to sell 7.5 decimals of land and the said Beyanama alleged to have been executed by the defendant no.1 was a forged and fabricated document and the defendant no.1 had never received any earnest money amounting to rupees four hundred. The Beyanama also does not contain the LTI of Dhobi Yadav. According to the contesting defendants, if any, Beyanama was executed by Dhobi Yadav it must have been executed after the registration of the sale deed in collusion with the plaintiffs. The contesting defendants have denied the statement that the plaintiffs had tendered the remaining consideration money to the defendant no.1 and no notice was served upon the defendant no.1. It has been stated that the sale deed executed in favor of the contesting defendant is a valid and genuine document and it is for consideration. The defendant IInd set had no knowledge about the existence of any Beyanama. It has also been stated that after execution of the sale deed the contesting defendant came in possession of the suit land and their names were also mutated. The contesting defendants also denied the other averments of the plaintiffs and prayed to dismiss the suit with costs.

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4. It appears that the learned trial court had dismissed the suit of the plaintiffs for specific performance of contract but the learned first

appellate court allowed the appeal and decreed the suit of the plaintiffs for specific performance of contract.

5. Being aggrieved by the judgment of the appellate court, the present appellant, who was defendant IInd set, has preferred this appeal.

6. It is admitted position that the Second Appeals are decided on the substantial question of law and not on the substantial question of facts. It appears from perusal of the record that on 29.10.1990, when the appeal was admitted for hearing two substantial question of law was framed which are as follows:

> "1. The plaintiffs case being based on the alleged sada Baybayana, whether relief could be given to him without getting the genuineness of the LTI of defendant no.1 on the sada Baybayana exhibited by proper evidence more so without any expert was examined?
>
> 2. Whether the subsequent sale deed could be brushed aside even when they were executed in favour of defendant IInd party without notice to them about the earlier Baybayana?"

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7. From perusal of the first substantial question of law, it appears that this relates to substantial question of fact and not substantial question of law and, therefore, I am of the view that it is out of consideration in this second appeal. Hence, there remains only one substantial question of law which needs determination i.e. whether the subsequent sale deed could be declared void even when it was executed in favour of defendant IInd party without notice to them about the earlier Beyanama.

8. The only substantial question of law to be decided in this second appeal appears to be based on the provision of law as provided under section 19 Clause (b) of the Specific Relief Act, 1963, which provides that a transferee for value who had paid his money in good faith and without notice of the original contract is protected under this provision and the relief for specific performance can not be granted against him. In order to appreciate the provision laid down under the law, I would like to reproduce section 19 of the Specific Relief Act, 1963, which reads thus:

> "19. Relief against parties and persons claiming under them by subsequent title.— Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—
> (a) either party thereto;
> (b) Any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
> (c) .....
> (d) .....
> (e) .....

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The very wording of section 19(b) of the Specific Relief Act provides that a transferee for value who has paid his money in good faith and without notice of the original contract is protected under law and no decree for specific performance can be passed against him. It is admitted position that the sale deed of the defendant IInd set is a registered sale deed and the presumption of genuineness is attached to

the registered sale deed, in question. It is settled law that if any registered document comes into existence after execution of any agreement for sale in order to defeat the enforcement of agreement, the subsequent execution of the sale deed shall not stand in the way of enforcing the contract for sale. Under such circumstances, I am of the opinion that if the plaintiffs claim for specific relief is allowed, the plaintiffs will have to prove that contesting defendants had knowledge about the execution of agreement for sale and the contesting defendants have to prove that he had no knowledge of existence of such agreement. In this regard, learned advocate of the appellant has placed reliance upon the decision reported in AIR 2002 Kerala 339 (Rajan and others Vs. Yunuskutty and others) which says that subsequent purchasers not aware of existence of agreement for sale or pendency of suit would be protected by provision of Section 19 of the Specific Relief Act. Learned Counsel for the respondents has placed reliance upon the decision of the Apex Court given in the case of R. K. Mohammed Ubaidullah & Ors. Vs. Hajee C. Abdul Wahab (D) by Lrs. & ors. (2001 (2) PLJR (SC) 25. He has placed reliance upon paragraph 15 and 16 of the above mentioned judgment. Relevant lines from paragraphs 15 and 16 of the judgment are as follows:

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> "15. As can be seen from Section 19 (a) and (b) extracted above specific performance of a contract can be enforced against (a) either party thereto and (b) any person claiming under him by a title arising subsequent to the

> contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) protects the bonafide purchaser in good faith for value without notice of the original contract. This protection is in the nature of exception to the general rule. ….....
>
> 16. Notice is defined in Section 3 of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. "A person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it."

From perusal of both the decisions, it is clear that Section 19(b) of the Specific Relief Act protects the bonafide purchaser in good faith for value who had no notice of the original contract for sale.

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9. It has been argued by the learned advocate of the respondents that the essence of section 19(b) of the Specific Relief Act is that the subsequent purchaser must have no notice of the previous document and if it is established that subsequent purchaser had notice about the existence of previous document i.e. agreement for sale no benefit of section19 (b) of the Specific Relief Act Act can be given to the subsequent purchasers. Learned Advocate asserted that the contesting defendants had notice about the existence of agreement for sale and submitted that in this regard the plaintiffs have adduced sufficient evidence and moreover, it has come on record that the

plaintiffs are in possession of the suit property. He submitted that contesting defendants, who are residing in the same locality, had knowledge about the delivery of possession of the suit land to the plaintiffs. But, I can not agree with the submission of the learned advocate of the respondents in view of the fact that there is specific pleading of the contesting defendants that after purchase of the suit property he came in possession of the suit property and got his name mutated in the Anchal Office. In this regard, the contesting defendants have brought on record the rent receipt in proof of payment of Malguzari. It is true that the rent receipt is not a document of title but this document shows possession of the contesting defendants over the suit property. There is nothing on record that the mutation of the name of the contesting defendants was challenged by the respondents at any stage although the plaintiffs were knowing this fact at least from the time when the defendants filed written statement. This goes to prove that the plea of the plaintiffs-respondents that he is in possession of the suit property does not appear to be correct. Under such circumstances, it is difficult for me to hold that the contesting defendants had knowledge about the execution of agreement for sale in favour of the plaintiffs by the defendant no.1

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10. In such view of the matter, I am of the opinion that the contesting defendants are protected under the provision of section 19 (b) of the Specific Relief Act, 1963, being a bonafide purchaser in good

faith and no decree for specific performance of contract can be passed against the contesting defendants-appellants.

11. Under the circumstances, mentioned above, I am of the opinion that the judgment of the appellate court is not in accordance with law and the same requires interference.

12. In the result, this Second Appeal is hereby allowed. The judgment and decree dated 27th November, 1989 and 14.12.89 respectively passed by Sub-Judge II, Jamui, in Title Appeal No.13 of 1983 are hereby set aside and the judgment and decree dated 27th October, 1983 passed in Title Suit no. 9 of 1981 of the trial court i.e. of Munsif, Jamui, whereby the trial court had dismissed the suit of the plaintiffs, is hereby restored.

13. In the circumstances of the case, there will be no order as to costs.

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(Syed Md. Mahfooz Alam,J.)

Patna High Court,
Patna.
Dated 7th August, 2008.
NAFR / JA